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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CLUNIES A. HOLT et al., Petitioners, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; TIMOTHY H. HARRIS et al., Real Parties in Interest.	G040591 (Super. Ct. No. 06CC12290) O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, David C. Velasquez, Judge. Petition denied.

Law Offices of William B. Hanley, William B. Hanley, for Petitioners.

No appearance for Respondent.

Mandel, Norwood & Grant, S. Jerome Mandel, and Lilly Lewis, for Real Parties in Interest.

According to petitioners' (plaintiffs) verified petition for writ of mandate, the following issue is presented: Does an order violate the attorney work product doctrine when it compels plaintiffs' "attorney to evaluate, categorize and label all documents received from third parties to correspond with each of the 36 [Code of Civil Procedure section 2031.010 et seq.] requests that were the subject of the motion?"[1] Because the court did not actually order plaintiffs to do what they claim was ordered, we deny the petition.

FACTS

The inspection demands at issue were propounded by real parties in interest (defendants) who were added to the case as defendants in an amended pleading. The new defendants sought to have plaintiffs produce all documents in their possession, custody, or control (including documents previously obtained in discovery before the new defendants were added to the case) that were responsive to their 36 inspection demands. Ruling on a motion to compel, the court ordered plaintiffs to provide further responses on two grounds: A defective verification and a failure to particularize documents which the plaintiffs objected to producing.

Plaintiffs amended their responses, then amended the responses again following a meet and confer process. The most recent responses to each inspection

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[1] Defendants' verified response to plaintiffs' description of the court's order simply notes that the court's written order and the hearing transcript "speak for themselves." In an unverified portion of their brief, defendants restate the issue as whether it is "a violation of the attorney work-product rule to require plaintiffs and/or their counsel to comply with CCP Section 2031.280(a), *i.e.* to categorize and label documents responsive to a properly propounded document demand, when those responsive documents were received by plaintiffs pursuant to discovery completed by them *before* the propounding parties ever were named as parties to the litigation in a subsequent amended complaint."

All further statutory references are to the Code of Civil Procedure.

demand include lists of broad categories of documents that will be made available for inspection, as well as a general appendix to the responses that identifies the source of documents by bates numbers (i.e., explaining which bates numbers correspond with which "third party" source of documents), as well as a general list of the categories of documents (e.g., "public record documents," "bank records," "emails provided by David Denholm") to be made available for inspection. Nevertheless, defendants remained dissatisfied with the responses, and filed a motion for sanctions for failure to comply with the court's previous discovery order. Although the documents still had not actually been produced for inspection, defendants complained in their motion that plaintiffs had violated the previous order by "making a wholesale 'document dump' of more than 70,000+ documents without any greater specificity."

As the parties apparently see it, the court (in ruling on the motion for sanctions) ordered plaintiffs to further evaluate, categorize, and label each and every "third party" (not from plaintiffs' records, but rather obtained in discovery) document so that each individual "third party" document was specifically identified with particular inspection requests. The court's written order, however, does not contemplate further identification of particular documents *that will be produced for inspection* in a supplemental written response to the inspection demands. With regard to seven of the inspection demands, the court found plaintiffs had still failed to state with particularity the documents *to which it objected to producing for inspection*. But the court found the remainder of plaintiffs' written responses were sufficient under the Code of Civil Procedure.

The court's written order is also silent as to the method of producing the third-party documents: "[D]ocuments 'produced by Plaintiffs only from their files' must be produced either as they are kept in the usual course of business, or organized and labeled to correspond to the categories in the discovery demand. Simply making such documents 'available on disc' is not sufficient." The court marked out an additional

sentence that it had included in its tentative decision: "On the other hand, documents received from other parties may be produced in the manner in which plaintiffs received them." The court's written order does not command plaintiffs to produce the third party documents in any particular fashion.

The transcript from oral argument provides some initial confirmation of the parties' characterization of the order. The parties engaged in vigorous argument as to whether the third party documents could be simply handed over as produced to plaintiffs by the third parties. After considering this argument, the court ruled: "Well, the court will abide by the tentative except as follows: with respect to the third paragraph . . . , the court will strike the last sentence, the sentence which reads, 'on the other hand,' [documents received from other parties may be produced in the manner in which plaintiffs received them]." Later, the court commented: "[Plaintiffs' counsel] may not have to do copying. He has to do labeling or categorizing." The court, in responding to plaintiffs' offer to make the third party documents available for inspection in hard copy form as they were produced, instructed plaintiffs' counsel: "You still have to label them and categorize them."

The court's final thoughts on the issue, however, belie a characterization of the order requiring plaintiffs to "categorize" the third party documents according to document request number. Counsel for defendants asked for additional clarification, noting he believed the court's ruling required the plaintiffs to provide additional written responses identifying bates number ranges of documents responsive to each request at issue, rather than simply referring to the general categories of documents it was producing for all of the requests. The court disagreed, indicating plaintiffs were entitled to identify documents in its responses as broadly as they wished: "That was the problem the court had with the motion is that the categorization was very general. I'm going by the separate statement. And the separate statement is asking for contentions. And so if that's what they're contending plaintiff will live and die by their contention." In other

words, plaintiffs were entitled to identify broad categories of documents as being responsive to each of defendants' requests, and were not required to pinpoint individual documents as being responsive to the requests. Counsel for defendants responded: "But that's the point. They don't have a downside. There is no die because they're going overboard in giving me 70,000 [documents] and there's no downside. It's not like they're giving you one and the downside is if they find something else."

The court rebuffed this challenge: "You know there probably is a lot of excess in the identification, but I can't say that today because I don't know what [the documents] are. All I see is there's a bunch of documents that plaintiff contends support their theory that there was an agreement. But I can't make any distinctions. . . . [I]f it turns out after trial that there was bad faith discovery abuse then you have to take appropriate actions." The court seemingly, then, found plaintiffs' written categorization of the documents sufficient. The court's discussion of the need for "labeling" and "categorizing" suggests plaintiffs should make all of the documents available to defendants in an accessible format according to the document categories identified by plaintiffs in their written responses (including the "appendix"). At least prior to the actual inspection occurring, the court was not willing to find that plaintiffs had acted in bad faith by broadly identifying categories of documents as responsive to each of the requests. The only discernable "order" relating to the method of production is that plaintiffs should not engage in a "document dump," but instead should provide some labeling of the mass of documents to correspond with the categories identified by plaintiffs in their responses.

DISCUSSION

A party responding to an inspection demand has two basic obligations: service of a written response and production of the requested items. First, the responding

party must prepare a verified written response to the demand. (§§ 2031.210, 2031.250.) "The party to whom an inspection demand has been directed shall respond separately to each item or category of item by any of the following: [¶] (1) A statement that the party will comply with the particular demand for inspection . . . and any related activities. [¶] (2) A representation that the party lacks the ability to comply with the demand for inspection of a particular item or category of item. [¶] (3) An objection to the particular demand." (§ 2031.210, subd. (a).)

A statement of compliance requires only a representation that the inspection will be allowed, and "that all documents or things in the demanded category that are in the possession, custody, or control of that party" will be included in the inspection. (§ 2031.220.) A representation of an inability to comply with a request requires an explanation of the reason for such inability. (§ 2031.230.) Further elucidation in the response is required if the inspection is to be disallowed in whole or in part based on an objection. The responding party must explain the ground for any objection and identify "with particularity" the documents or things that will be withheld from the inspection on the basis of the objection. (§ 2031.240.) There is no requirement in the Code of Civil Procedure that a responding party identify in its response (with particularity or otherwise) the specific documents or things it intends to produce in response to a particular demand if it provides a statement of compliance.

If the responding party does not object to the requests in their entirety, the responding party then must make the requested documents, things, or property available for inspection. "Any documents produced in response to an inspection demand shall either be produced as they are kept in the usual course of business or be organized and labeled to correspond with the categories in the demand." (§ 2031.280, subd. (a).)

The court order simply does not require plaintiffs to label and organize documents to correspond to individual requests. As to written responses, the court found plaintiffs had not adequately explained the basis for their objections with regard to seven

of the requests. The court did not order plaintiffs to provide additional descriptions or identifications of documents they intended to produce in response to particular requests.

Furthermore, as to the manner of production, the court did not order plaintiffs to produce the third party documents according to document request. The written order is silent as to the method of producing the "third party" documents. The crux of the court's comments at the hearing was to require plaintiffs to provide some form of organization to the third party documents so defendants could readily identify the source and substance of the various documents (according to the categories *identified by plaintiffs* in their responses and the appendix they attached to their responses). To comply with the court's instructions, plaintiffs should simply produce the documents at the inspection in a manner allowing defendants to determine which documents fall into plaintiffs' categorization of the documents (e.g., "public record documents," "bank records," "emails provided by David Denholm").[2] The court simply exercised its discretion to divide the burdens of discovery (here, review of tens of thousands of documents) in what it deemed an equitable manner. (See *Toshiba America Electronic Components, Inc. v. Superior Court* (2004) 124 Cal.App.4th 762, 771 ["The Discovery Act authorizes the trial court to manage discovery and to prevent misuse of discovery procedures"].)

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[2] We understand that, for reasons of judicial economy, trial courts often adopt tentative decisions as final orders. We further understand the reluctance of attorneys to incur billable time litigating the content of an order under California Rules of Court, rule 3.1312, when the court has already stated at a hearing that it wishes to make the tentative decision final. However, it is obvious in retrospect that substantial resources (those of the parties and of this court) could have been saved had the parties requested the court to sign an order encompassing the result of the hearing at issue in this case. If a party intends to appeal an order, an appellate court should not be required to piece together from a written transcript various comments made by the trial judge in order to arrive at what the court actually intended. If the written order does not clearly state what an appellant thinks the court intended, it is incumbent upon the appellant to obtain a written order clarifying the court's intended meaning.

DISPOSITION

We deny plaintiffs' petition for writ of mandate. In the interests of justice, each party shall bear their own costs.

IKOLA, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.